

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1426 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINBHAI JERAMBHAI KHUNT

Versus

COMMISSIONER OF POLICE

Appearance:

MR PRAVIN GONDALIYA for Petitioner

MR DP JOSHI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/11/1999

ORAL JUDGEMENT

#. Heard the learned advocate Mr.P.S. Gondaliya for the petitioner and Mr. D.P. Joshi, learned AGP for the respondents. The order of detention passed by respondent no.1 - Commissioner of Police, Rajkot City in exercise of power conferred under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition under article 226 of the Constitution of India.

#. The grounds of detention served to the petitioner and

produced at Annexure:B inter alia indicate that about 6 criminal cases are registered against the petitioner at Malaviyanagar Police Station and at Rajkot Taluka Police Station, Rajkot on 4.1.99 and 5.1.99 respectively in respect to the offences made punishable under section 392 of I.P.C. It is alleged against the petitioner that the petitioner was moving on his bullet motor-cycle on public road and threatening the hawkers running their business at night and by force was extracting money from the public and as such, six offences have been registered against the petitioner and his accomplice. Over and above that, two witnesses on assurance of anonymity have supplied information against the petitioner in respect to the incidents alleged to have been occurred on 29.11.98 and 27.12.98. The statements of the witnesses are recorded on 8th January, 1999 and 9th January, 1999.

#. On the basis of the aforesaid material, respondent no.1 has come to a conclusion that the petitioner is a "dangerous person" within the meaning of section 2(c) of PASA. That resort to general provisions of law being insufficient, the detention order is necessary. Hence, the detention order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended at the bar that on the date of passing of the impugned order, the petitioner was in judicial custody and yet the detention order is passed without considering the less drastic remedy like opposing or cancellation of bail.

#. In the matter of Zubedabibi vs. State of Gujarat, reported vide 1995(2) GLR, 1134, Division Bench of this Court has expressed a view that non consideration of less drastic remedy like cancellation of bail available under section 437(5) of Cr.P.C. discloses non application of mind on the part of the detaining authority vitiating the subjective satisfaction and rendering the detention order invalid. That the said view has been approved and endorsed in L.P.A. No. 1056/99 decided on 15.9.99 by this Court (Coram: C.K.Thakkar & A.L.Dave, JJ).

#. In the instant case also, para 8 of the grounds of detention disclosed the fact that the detaining authority has considered the aspect that the petitioner was in judicial custody. However, an apprehension has been expressed that in all possibility, the petitioner is likely to get himself released on bail and after getting released on bail, he is likely to continue his anti-social activity. The grounds of detention are devoid of any fact or averments to show that the

detaining authority has considered the less drastic remedy like cancellation of bail available under section 437(5) of Cr.P.C. In overall consideration of the fact apparent from the grounds of detention, it appears that non consideration of the said aspect amounts to non application of mind vitiating the subjective satisfaction reached by the detaining authority and thus rendering the impugned order invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider other contentions raised by the petitioner.

#. On the basis of the aforesaid discussion, the petition is allowed and detention order dated 10.1.99 passed by respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Pravinbhai Jerambhai Khunt is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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